



## **Roswell Planning & Zoning Commission Minutes**

Tuesday, March 22, 2016 - 6:00 PM

Bassett Auditorium, Roswell Museum and Art Center

100 West 11<sup>th</sup> Street

Commission Chair: Ralph Brown

Vice Chair: Riley Armstrong

Secretary: Eddie Carrillo

Commission Members: Shirley Childress,  
Toby Gross, Bruce Gwartney, David Storey

Planning Staff: Merideth Hildreth, AICP

William Morris, AICP, CZO

Louis Najar, PE

### **A. CALL TO ORDER AND WELCOME – Chair Ralph Brown**

A regular meeting of the Planning & Zoning Commission was called to order at approximately 6:01 p.m. by Chair Brown with the following members present:

### **B. Roll-Call**

Ralph Brown (Chair)	PRESENT
Riley Armstrong (Vice Chair)	ABSENT
Eddie Carrillo (Secretary)	ABSENT
Toby Gross	PRESENT
Shirley Childress	PRESENT
Bruce Gwartney	PRESENT
David Storey	PRESENT

Staff Members Present: Merideth Hildreth, AICP, Current Planning Administrator;  
William Morris, AICP, CZO, Planning Manager; and Louis Najar, Director of  
Planning and Engineering

### **C. Swearing In: Chair Brown swore in staff and members of the audience.**

### **D. Approval of the Agenda**

**Motion to Approve the Agenda Made by Commissioner Storey.**

**Second by – Commissioner Childress.**

**The motion passed 5 to 0.**

**E. Minutes: Consider approval of the February 23, 2016 minutes**

**Motion to Approve the February 23, 2016 Minutes Made by Commissioner Storey.**

**Second by Commissioner Childress.**

**The motion passed 5 – 0.**

**F. Public Hearing Items**

- 1. CASE 16-03 (VAR) Request for a Variance for Side Yard and Rear Yard Setbacks and over forty percent coverage of Rear Yard Setback for Accessory Structure; Tierra Berrenda 5 Amend, Block 2, Lot 6 - known as 855 Swinging Spear Road (Testorff/Owner & Agent).**

Exhibits for Each Case Attached: (A) Application; (B) Staff Summary; (C) Letter Notifying Surrounding Property Owners; (D) List of Property Owners Notified; (E) Chaves County Assessor's Map Identifying Properties with the Notification Area; (F) Aerial Map of Property Requesting Variance; (G) Permit Application; (H) Site Plan.

Mr. Morris: In packet, staff had approval, but after further review, staff recommends denial.

Chair Brown: Anyone wishing to speak in favor of Approval of the application.

Martin Testorff residing at 855 Swinging Spear Road:

My shop burned down October 9, 2015. In January 2015, I applied for a permit. In February, I called again regarding my permit. I talked to my contractor, he said we were good to go. I was given a limited amount of time to use insurance money. It did not change foot print of structure approved in 1995, built the replacement structure taller. My contractor pulled electrical permit, insulated building, spent \$31,000 on the project. I was surprised to get a call 8 months later that I was denied.

Commissioner Gwartney: Asked about the permit.

Mr. Testorff: The agreement with my contractor was for him to pull the permit. I was out of town. He pulled the electrical permit, and I assumed that when the Electrical Inspector came to inspect it, I thought I was on the right path.

Commissioner Gross: A lot of times at P&Z we see structure done and built and we see an issue.

Mr. Testorff: The only inspections I had was the Electrical Inspector and Insurance Inspector checking on progress.

Commissioner Gross: Our only question was were you properly permitted, or to go back on contractor's mistake – which was yours. That's what we are looking at.

Mr. Morris: One other issued we have identified is that the structure may be encroaching in the alley by about a foot.

Melvin Elcott – residing at 861 Swinging Spear.

The morning of the fire, I was in the kitchen about 4:30 in the morning. I saw his existing structure fully involved. It had already vented itself and opened up the roof. As a retired fire fighter I saw it as a total loss. I have no objections. I like the workshop and am envious, would like to have a nice structure like it.

Chair Brown: Anyone Against 16-03?

Mr. Morris: I would say with this was a non-conforming structure, now out of conformance with code adopted in July. I know there is no building permit issued. There is an encroachment into a platted alley and takes up much of the rear yard setback. For these reasons, I recommend to deny.

Mr. Testorff: January 16, 2015, I applied for Building Permit. I keep the area between the building and alley spotless and weeded.

Chair Brown: If appeal is filed, required to be submitted in writing by noon on Thursday to the City Clerk.

Commissioner Gross: If you are asking for permission after the fact, to be in compliance, we would have to go back to a building permit of some sort. Compassionately I understand your dilemma.

Chair Brown: The contractor would have pushed to get building permit.

Mr. Testorff: I called 3 times.

Chair Brown: One thing that troubles me is that the applicant went through the process to apply for a building permit.

Mr. Morris: Can I ask the applicant of the Timeline.

Mr. Testorff: I filled out application on January 16, 2015. I got sent off by American Airlines for a month to school.

Commissioner Gross: Louis, what is your take?

Mr. Najar: He built building, pushed the fence out. He does have a nice building, fence is protruding into right of way. The power lines with 17 foot structure doesn't look like it has adequate clearance.

He would need to come up with a remedy to right-of-way encroachment and drainage from roof line. Not as clean as he said. I would like to know if his run off goes into neighbor's yard to west.

Commissioner Storey: I recommend tabling this case to the next meeting for remedy to encroachment, and run-off, and power line clearance – would like to possibly table this one and let this gentleman prove he has a viable solution, and notify CID that a contractor did build without a permit, and recommend a double fine.

Commissioner Gross: I think he needs to reapply for building permit, and ask for permission for what he has done. Xcel Energy is a big one.

David Storey: I don't disagree with that.

Mr. Testorff: I assumed it was turned in on January 16, 2015, why was it not denied by Merideth until January 29, 2016.

Mr. Najar: The City didn't have the setbacks until July 2015.

Chair Brown: Bill, would you be willing to look at this?

Commissioner Gross: I would like you to write this down.

**Commissioner Story: Made a motion to table Case 16-03 requesting a Variance and how the owner and agent work with City Staff to look at remedies.**

**Second by Commissioner Gross.**

**The motion passed 5 to 0.**

**2. CASE 16-04 (VAR) – Request for a Variance to extend an accessory structure roof to extend into required Side Yard on a Corner Lot; West Side Subdivision, Block 60, Lot 7 – known as 1300 North Pennsylvania Avenue (Kosturska-Barrett/Owner & Agent).**

Exhibits for Each Case Attached: (A) Application; (B) Staff Summary; (C) Letter Notifying Surrounding Property Owners; (D) List of Property Owners Notified; (E) Chaves County Assessor's Map Identifying Properties with the Notification Area; (F) Aerial Map of Property Requesting Variance; (G) Photos.

Chair Brown: Anyone in favor of approving Case 16-04?

Branka Barrett – residing at 1300 North Pennsylvania.

I made this little model to show the roof extension over a patio. I like to design and make things look beautiful. We had much rain and snow the last two years that destroyed the floors and walls that we tried to make beautiful. I came up with

an idea to make a cover either this way or this way. I am planning to do a beautiful gate and wall.

Commissioner Storey: You would like to cover the patio?

Mr. Najar: I met with the lady on site. She would like to do wrought iron supports and make an awning for the porch and match existing décor.

Chair Brown: Anyone else wishing to speak in favor of 16-04.

Mr. Morris: What she is proposing is consistent with the character of the area.

Chair Brown: Any one against 16-04?

Chair Brown: Commission, is there discussion?

**Commissioner Childress: Made a motion to approve a variance for Case 16-04 with findings of fact as presented and staff recommendation.**

**Second by Commissioner Gwartney.**

**The motion passed 5 to 0.**

**3. PROPOSED TEXT AMENDMENT to the City of Roswell Zoning Ordinance; Modification of Article 9: R-3 Residential District, specifically, creating a new Conditional Use for Daycare facilities in the R-3 zoning district, and Article 26: Signs, specifically creating criteria for monument signage. (Attachment – 4 Pages.)**

Mr. Morris: There is an interest to allow daycares in R-3 above 12 children. Up to 5 for children are allowed for a Minor Home Occupation and 6 to 12 children are allowed for a Major Home Occupation. Just to let you know, we have a code writing committee looking at creating a Unified Development Code. We are looking at making Day Care Centers in R-3 as a Conditional Use. This acknowledges this as a commercial use in a residential area. Ingress and Egress for drop-off and pick up, parking for employees on site will have to be provided.

Our code now allows a 35-foot tall sign in the residential district with a Special Use permit. We would like to change the code to specify a sign that fits with residential area for conditional or special use permit. Signs would meet the six criteria listed above.

Chair Brown: Bill, would we be making a recommendation to City Council?

Mr. Morris: Yes, the recommendation would go to our Legal Committee first.

Chair Brown: Riley Armstrong and myself are on this code writing committee. There has been input from Riley and myself. Planning and Zoning Commission has two seats on this group.

Mr. Morris: The Code Writing Committee is comprised of 2 members of Council, 2 members of Planning and Zoning Commission, and 5 staff.

Commissioner Storey: Do you need to take into account parking, including temporary parking when parents pick up and drop off children?

Mr. Morris: You are right, we will come up with another way to phrase that.

Commissioner Storey: Would signs be allowed in right-of-way?

Mr. Morris: No, signs will be required to meet sign setback criteria.

Chair Brown: Could we make a motion to include drop-off and pick up location criteria?

Mr. Morris: Yes.

**Commissioner Storey: Made a motion to forward the Proposed Text Amendment on to City Council with changes for positive approval to approve the Proposed Text Amendment.  
Second by Commissioner Childress.  
The motion passed 5 to 0.**

## **G. Other Business**

### **1. Presentation of second draft mobile vendor ordinance: Transient & Itinerant Merchants and Itinerant Vendors (Attachment – 4 Pages.)**

Mr. Morris: Staff requests to look at all vendors, not just food vendors. Before you had a draft ordinance for “food vendor.” Now you have in front of you a draft ordinance for “itinerant vendors.” Mr. Morris pointed out changes to Sections nine and ten. The one section above is for non-food vendors who need a vendor permit like anyone else. Must set up as shown on permit. Tents and temporary displays must be secure and have adequate night lighting if set up at night. This is a non-action item and is still evolving.

Commissioner Gross: Had a question about 120 consecutive hours. It doesn't look like temporary. Could set up all week. I think what we were trying to do is make temporary as temporary.

Commissioner Storey: Section B. 10. Itinerant Vendors – must move belongings from site every day. How does that work with the 120 consecutive hours? I have a problem with police department obtaining finger prints.

Mr. Morris: We will look at this. I am not thrilled with the first part from the original text. We are looking at conditions to keep all vendors safe.

Mr. Najar: I think 120 hours is for fireworks vendors.

Mr. Morris: What if Sears wants to have a sale in their parking lot – then it is special outdoor sales for them.

Commissioner Gross: If that property is in C-2, he should be compliant in C-2 – if he wants to put sign or chair or table on property.

Mr. Morris: This came from the Building Official.

Commissioner Gross: Don't have to be ADA compliant – how do you address the guy who owns a piece of dirt and has a trailer? He has to be compliant for the property and the trailer.

Chair Brown: As soon as open chairs and tables, it is open it to public. If placed on a sidewalk, it becomes a trip hazard and code enforcement issue.

Mr. Najar: Let us go back and research some more. If a mobile vendor is located at a park, the vendor would get a mobile vendor permit for the day as long as the vendor is not set up at a park with concession.

## **2. Presentation of information on manufactured homes and terminology for discussion purposes. (Attachment – 2 Pages.)**

Ms. Hildreth presented information about manufactured homes and that the Code's language and definitions need updating.

Mr. Morris: When we adopted amendments in July 2015, double-wides are manufactured home and are built to HUD standards and have a plate. New Mexico states that manufactured homes are not to be treated any differently. We now have single-wide manufactured, double wide, and mobile homes (built before 1974).

Chair Brown:  
Thank you for laying the ground work.

Chair Brown: Are we changing the format to the Packets? If you would look at previous format. If format is changed, let us know.

Mr. Morris: We will look at previous format.

## **H. Public Comments**

I am Mary Dixon. I purchased a 1962 Mobile Home and my goal is to completely renovate and bring it up to code. It will all be done through electrical and gas contractor. I have spoken to Betty Blanton,

When I contacted staff, told anything older than 1974, was not allowed in city limits. I came tonight to be sure that I can site the home in the City. Betty will not give a qualified inspection for something that doesn't meet code.

Mr. Morris: Two tests here. Has to be upgraded by licensed contractors. Make sure Betty is happy and can certify that it is up to standards. Staff can help you locate an appropriate zoning location.

Ms. Dixon: It is sitting in Chaves County. I don't know if I need building permits from City, or just placement permit,

Mr. Najar: When renovated, will it get the HUD sticker?

Ms. Hildreth: No, because it was built prior to 1974, it can't be approved by HUD for HUD certification

Mr. Morris: It will be considered a Mobile Home Restoration.

**Chair Brown: I see we have a term expired by Eddie Carrillo, David Storey is close. Mr. Carillo will be termed out at the end of this month.**

Mr. Morris: The three that are eligible need to turn in applications. The Council will take them into consideration.

## **I. Adjourn**

**The meeting adjourned at 7:18 p.m.**